

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CASE NO. 15-cr-2044-GPC

Plaintiff.

vs.

JAVIER MARIN-CAMPOS,

Defendant.

ORDER DIRECTING DISCLOSURE OF CANINE RECORDS

On October 9, 2015, the Court ordered the production of canine training and certification records for the Border Patrol canine officer and drug-detecting canine involved in the seizure of liquid methamphetamine in this case. In addition, the Court permitted the Government to submit these canine records, *in camera*, in the event that the Government sought to redact information from the canine records. On October 19, 2015, the Government submitted, *in camera*, two sets of canine records. One set was unredacted and the second set was redacted. The Government proposes to meet its discovery obligations by disclosing the redacted set of records.

The Supreme Court has held that a defendant must be afforded the opportunity to challenge “evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses.” *See Florida v. Harris*, — U.S. —, 133 S.Ct. 1050, 1057 (2013). “The defendant, for example, may contest

1 the adequacy of a certification or training program, perhaps asserting that its standards
 2 are too lax or its methods faulty. So too, the defendant may examine how the dog (or
 3 handler) performed in the assessments made in those settings.” *Id.* Under Rule 16 of
 4 the Federal Rules of Criminal Procedure, the Government is required to disclose
 5 materials pertaining to a narcotics-detection canine training and certification because
 6 these documents and records are crucial to a defendant’s ability to assess the dog’s
 7 reliability and to conduct an effective cross-examination of the dog’s handler. *United*
 8 *States v. Cedano-Arellano*, 332 F.3d 568, 571 (9th Cir. 2003). In *United States v.*
 9 *Thomas*, 726 F.3d 1086, 1096 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 2154 (2014), the
 10 Ninth Circuit disapproved the wholesale redactions of canine records which obscured
 11 comments on nearly every page of the records. The court instructed that it would be
 12 for the district court in the first instance to determine whether “on remand, a protective
 13 order or an in camera hearing is necessary to accommodate any law enforcement
 14 confidentiality concerns.” *United States v. Budziak*, 697 F.3d 1105, 1113 (9th Cir.
 15 2012).

16 Here, the Government has not provided an affidavit by any law enforcement
 17 officer explaining why the redactions are necessary to accommodate any law
 18 enforcement concerns. The Court denies, without prejudice, the Government’s request
 19 to produce the redacted discovery. The Government has until the close of business on
 20 **October 22, 2015** to provide an affidavit explaining why the redactions are necessary,
 21 particularly as to records involving tests involving methamphetamine performed in or
 22 around a car, SUV or truck.

23 **IT IS SO ORDERED.**

24 DATED: October 19, 2015

25 
 26 HON. GONZALO P. CURIEL
 27 United States District Judge
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